

FRANK E. EVANS

IBLA 94-608

Decided March 4, 1997

Appeal from a decision of the Montana State Office, Bureau of Land Management, declaring mining claims abandoned and void (M MC 63138 - M MC 63141).

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

If a mining claimant fails to pay the rental fees required by the Act of Oct. 5, 1992, or file separate certificates of exemption on or before Aug. 31, 1993, the claims are properly deemed abandoned and void. No grace period for filing late certificates of exemption from the rental fee requirement has been provided by Departmental regulation; those documents must be received by BLM on or before the date required by regulation.

2. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption–Notice: Generally

A claimant's assertion that he did not receive personal notification of the rental fee requirements of the Act of Oct. 5, 1992, and its implementing regulations provides no basis for reversing a decision declaring his claims abandoned and void for failure to comply with those requirements. All persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations.

3. Administrative Procedure: Hearings—Hearings—Mining Claims: Abandonment—Mining Claims: Rental or Claim Maintenance Fees: Generally—Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption—Rules of Practice: Appeals: Hearings—Rules of Practice: Hearings

No evidentiary hearing is required where the validity of a claim depends upon the legal effect to be given uncontested facts of record. Where a statute explicitly provides that failure to comply with the applicable filing requirements leads automatically to loss of a mining claim, that provision is not subject to a hearing.

APPEARANCE: Frank E. Evans, pro se.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Frank E. Evans has appealed from the May 31, 1994, decision of the Montana State Office, Bureau of Land Management (BLM), declaring the Heron & Evans Nos. 1 and 2 and the Gumbo Nos. 1 and 2 mining claims abandoned and void for failure to pay rental in the amount of \$100 per claim or to file a certificate of exemption from payment of rental by August 31, 1993 (M MC 63138 - M MC 63141). BLM's decision referred to the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1378-79 (1992), a provision of which requires that each claimant "pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993," for each unpatented mining claim, mill or tunnel site to hold such claim for the assessment year ending at noon on September 1, 1993. (Emphasis added.) The Act also contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, requiring payment of an additional \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79.

The only exemption provided from this rental fee requirement was the so-called "small miner exemption," available to claimants holding 10 or fewer claims on Federal lands who met all the conditions set forth in 43 CFR 3833.1-6(a) (1993). Washburn Mining Co., 133 IBLA 294, 296 (1995). The regulations required that a claimant apply for the small miner exemption by filing separate certificates of exemption on or before August 31, 1993, supporting the claimed exemption for each assessment year claimed. 43 CFR 3833.1-7(d) (1993).

[1] If a mining claimant fails to pay the rental fees required by the Act of October 5, 1992, or file separate certificates of exemption on or before August 31, 1993, the claims are properly deemed abandoned and void. No grace period for filing late certificates of exemption has been provided by Departmental regulation; those documents must have been received by BLM on or before the date required by regulation. See 43 CFR 3833.0-5(m); Nannie Edwards, 130 IBLA 59 (1994). This strict filing

requirement results from the requirement imposed by Congress that, for every unpatented mining claim, "each claimant shall, except as otherwise provided by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993." 106 Stat. 1378.

Appellant correctly states that he filed his "Affidavits of Annual Representation" (i.e., affidavits of labor) on September 7, 1993, but BLM returned these documents because appellant failed to file the rental fees or certificates of exemption by August 31, 1993, as required by the Act. Appellant states that he has had these claims for 20 years, ^{1/} that a hearing is necessary in this matter, and that he was not aware of the increase in the rental.

[2] The fact that appellant did not receive personal notification of the requirements does not provide a basis for reversing BLM's decision. All persons dealing with the Government are presumed to have knowledge of relevant statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Lester W. Pullen, 131 IBLA 271 (1994); Thomas L. Sawyer, 114 IBLA 135, 139 (1990); Magness Petroleum Corp., 113 IBLA 214, 217 (1990). BLM therefore had no obligation to provide appellant with any particular notice of the changes in the law since he was deemed to know the contents of the Act and duly promulgated regulations. See David and Roirdon Doremus, 61 IBLA 367, 368 (1982).

Where a mining claimant fails to qualify for a small miner exemption from the rental fee requirement, failure to pay fees in accordance with the Act and regulations results in a conclusive presumption of abandonment. Lee H. and Goldie E. Rice, 128 IBLA 137, 141 (1993). Even where extenuating circumstances are asserted, the Department is without authority to excuse lack of compliance with the rental fee requirement of the Act, to extend the time for compliance, or to afford any relief from the statutory consequences. In the absence of the filing of rental or exemption, BLM properly declared the claims abandoned and void.

[3] No evidentiary hearing is required where the validity of a claim depends upon the legal effect to be given uncontested facts of record. See United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971). In upholding a similar statutory provision that mining claims are

^{1/} The record does not support appellant's assertion that he has held these claims for 20 years. The notices of location for these claims were recorded in Madison County on Aug. 12, 1980, and filed with BLM the next day. A claim located prior to Oct. 21, 1976, was deemed abandoned and void under 43 U.S.C. § 1744(b) and (c) (1994) if it was not recorded with BLM by Oct. 22, 1979, and a claim located after Oct. 21, 1976, was deemed abandoned and void under 43 U.S.C. § 1744(b) and (c) (1994) if it was not recorded with BLM within 90 days after the date of location.

abandoned and void for failure to file timely a document required by statute, 43 U.S.C. § 1744 (1994), the Supreme Court found:

[T]he statute explicitly provides that failure to comply with the applicable filing requirements leads automatically to loss of the claim. * * * Thus, Congress has made it unnecessary to ascertain whether the individual in fact intends to abandon the claim, and there is no room to inquire whether substantial compliance is indicative of the claimant's intent—intent is simply irrelevant if the required filings are not made.

United States v. Locke, 471 U.S. 84, 102 (1985). The Court concluded that this forfeiture provision was not subject to "an individualized hearing requirement." Id. at 103. In Lee H. and Goldie E. Rice, supra at 141, we found that Congress intended the provisions of the Act to have the same construction as 43 U.S.C. § 1744 (1994).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

T. Britt Price
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

